



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 12, 1997

Ms. Joanne Wright
Associate General Counsel
Texas Department of Transportation
DeWitt C. Greer State Highway Building
125 E. 11th Street
Austin, Texas 78701-2483

OR97-2736

Dear Ms. Wright:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 110775.

The Texas Department of Transportation (the "department") received a request for five categories of information concerning the employment of several named employees and former employees, and concerning an audit conducted by the department. One of the categories of requested information is for "all materials, correspondence and memoranda relative and specific to the employment of Mr. Charles H. Bailey, Director of Civil Rights Division, Texas Department of Transportation." You assert that information that relates to Mr. Bailey's termination is protected from disclosure under section 552.103(a) of the Government Code. You submitted to this office representative samples of the information at issue.¹

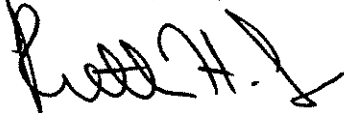
To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have shown that litigation is pending, and our review of the representative documents shows that these records are related to the pending litigation. We note, however, that once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). You

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

may withhold the records at issue that the opposing party to the anticipated litigation has not seen or had access to. The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 110775

Enclosures: Submitted documents

cc: Mr. David Romo
3903-A Valley View
Austin, Texas 78704
(w/o enclosures)